

16 Am. Jur. 2d Constitutional Law § 153

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Constitutional Law

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§ 153. Standing of public official to challenge constitutionality of statute—Members of Congress or state legislators

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[Construction and Operation of Twenty-Seventh Amendment to United States Constitution Relating to Congressional Compensation, 95 A.L.R.5th 459](#)

Members of Congress¹ and state legislators² have no special standing, by virtue of their position, to challenge the constitutionality of congressional or legislative action.³ A state legislator does not, merely by virtue of voting on the act,⁴ or by his or her status of as an elected member of the state legislature,⁵ have standing to challenge the constitutionality of an act.⁶ Likewise, a legislator's personal disappointment in the actions of the legislature does not provide him or her with a special right to act,⁷ at least where he or she offers no basis to conclude that he or she had been authorized by legislature to act on its behalf.⁸ However, a legislator does have standing to challenge the constitutionality of legislation if such legislator has a direct or personal stake or interest in the matter.⁹ To have standing to challenge constitutionality of a law, a legislator must establish that

he or she has suffered a distinct and palpable injury resulting from the passing of, or failure to pass, the law being challenged.¹⁰ This requisite injury for legislators may arise if the legislator's right to vote on a bill has somehow been nullified, usurped, or the legislator's vote has subsequently been rendered ineffective.¹¹ Thus, legislators whose votes would have been sufficient to defeat (or enact) a specific legislative act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified.¹²

It has been held that a congressman who by virtue of that office is also an employee of the United States government has standing to challenge the operation of a law that directly determines his or her rate of pay because such a claim alleges a distinct and palpable injury to him or her in his or her capacity as an employee.¹³ However, this analysis of standing has been rejected by some courts,¹⁴ and it has been held that a congressman does not have standing to challenge a cost-of-living increase in his or her pay.¹⁵

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Footnotes

- 1 [Holtzman v. Schlesinger](#), 484 F.2d 1307 (2d Cir. 1973) (Congresswoman challenging the legality of bombings in Cambodia by the United States).
- 2 [Korioth v. Brisco](#), 523 F.2d 1271, 21 Fed. R. Serv. 2d 380 (5th Cir. 1975); [Posner v. Rockefeller](#), 33 A.D.2d 314, 307 N.Y.S.2d 957 (3d Dep't 1970), order aff'd, 26 N.Y.2d 970, 311 N.Y.S.2d 15, 259 N.E.2d 484 (1970).
- 3 [Wilt v. Beal](#), 26 Pa. Commw. 298, 363 A.2d 876 (1976) (a state legislator had no standing to sue in his capacity as a legislator where the court could find no connection between his status as a legislator and any constitutional provision alleged to have been breached by the actions of the secretary of public welfare and the state treasurer).
- 4 [McDermott v. Ige](#), 135 Haw. 275, 349 P.3d 382 (2015) (abrogated on other grounds by, [Tax Foundation of Hawai'i v. State](#), 144 Haw. 175, 439 P.3d 127 (2019)).
- 5 [Allred v. Bebout](#), 2018 WY 8, 409 P.3d 260 (Wyo. 2018).
- 6 [McDermott v. Ige](#), 135 Haw. 275, 349 P.3d 382 (2015) (abrogated on other grounds by, [Tax Foundation of Hawai'i v. State](#), 144 Haw. 175, 439 P.3d 127 (2019)).
- 7 [Allred v. Bebout](#), 2018 WY 8, 409 P.3d 260 (Wyo. 2018).
- 8 [Allred v. Bebout](#), 2018 WY 8, 409 P.3d 260 (Wyo. 2018).
- 9 [Buckley v. Valeo](#), 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (challenge to the constitutionality of certain Federal Election Campaign Act provisions); [Blount v. Mandel](#), 400 F. Supp. 1190 (D. Md. 1975) (state legislators who held full-time positions with local boards of education challenging a determination setting lower salaries for legislators holding other public employment); [Bang v. Chase](#), 442 F. Supp. 758 (D. Minn. 1977), judgment aff'd, 436 U.S. 941, 98 S. Ct. 2840, 56 L. Ed. 2d 782 (1978) (state legislators challenging provisions of the state's statute relating to campaign funds and expenditures).
- 10 [McDermott v. Ige](#), 135 Haw. 275, 349 P.3d 382 (2015) (abrogated on other grounds by, [Tax Foundation of Hawai'i v. State](#), 144 Haw. 175, 439 P.3d 127 (2019)).
- 11 [McDermott v. Ige](#), 135 Haw. 275, 349 P.3d 382 (2015) (abrogated on other grounds by, [Tax Foundation of Hawai'i v. State](#), 144 Haw. 175, 439 P.3d 127 (2019)).
- 12 [League of Educ. Voters v. State](#), 176 Wash. 2d 808, 295 P.3d 743 (2013).
- 13 [Boehner v. Anderson](#), 30 F.3d 156 (D.C. Cir. 1994).
- 14 [Johnson v. U.S. Office of Personnel Management](#), 783 F.3d 655 (7th Cir. 2015); [Schaffer v. Clinton](#), 240 F.3d 878, 95 A.L.R.5th 715 (10th Cir. 2001).
- 15 [Schaffer v. Clinton](#), 240 F.3d 878, 95 A.L.R.5th 715 (10th Cir. 2001).

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§ 154. Standing of taxpayer to challenge constitutionality of statute

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[Constitutionality of Legislative Prayer Practices](#), 30 A.L.R.6th 459

Trial Strategy

[Proof of Religion in the Courtroom That Violates the Right to a Fair Trial](#), 73 Am. Jur. Proof of Facts 3d 89
[Interference with the Right to Free Exercise of Religion](#), 63 Am. Jur. Proof of Facts 3d 195

Forms

Forms relating to tax, see Am. Jur. Pleading and Practice Forms, Constitutional Law [\[Westlaw® Search Query\]](#)

A taxpayer who is directly and adversely affected by the assessment or levy of taxes has the necessary standing to challenge such a tax.¹ To entitle a taxpayer to bring a taxpayer's action, the general rule is that the taxpayer must have a pecuniary interest in the subject of the action and that the taxpayer must show that the acts complained of will result in some pecuniary loss or other injury to the taxpayer's property or interests as a taxpayer and to taxpayers as a class, normally through increased taxation and the consequences thereof.² Thus, the assessment of an allegedly discriminatory tax bestows standing on a taxpayer to challenge the constitutionality of the tax.³ A taxpayer has standing to challenge the collection of the specific tax assessment as unconstitutional because being forced to pay such a tax causes a real and immediate economic injury to the individual taxpayer.⁴

However, taxpayers as taxpayers do not have standing to challenge the constitutionality of a statute⁵ or government practice.⁶ There must be a logical link between the plaintiff's taxpayer status and the type of legislative enactment attacked,⁷ or a nexus between the plaintiffs' taxpayer status and the precise nature of the constitutional infringement being alleged,⁸ such as belonging to the class which is prejudiced by the statute.⁹

Under some authority, the interest, as would support standing, of a taxpayer who challenges the constitutionality of government action is her economic interest in having her tax dollars spent in a constitutional manner.¹⁰ That is, litigants seeking to establish municipal taxpayer standing to challenge unconstitutional governmental acts must satisfy two threshold criteria:¹¹ (1) they are municipal taxpayers, and (2) the municipality has used tax revenues on the allegedly unconstitutional acts. However, a plaintiff's status as a municipal taxpayer is irrelevant for standing purposes if no tax money is spent on the allegedly unconstitutional activity.¹²

However, an individual's status as a federal or state taxpayer does not convey Article III standing to challenge the expenditure of taxpayer funds,¹³ because the interest of a taxpayer in seeing that funds are spent in accordance with the Constitution does not give rise to the kind of redressable personal injury required for Article III standing.¹⁴ Rather, a plaintiff must make a showing that he or she has sustained or is immediately in danger of sustaining some direct injury, and not merely that he or she suffers in some indefinite way in common with people, generally.¹⁵

Taxpayers who sought to be excluded from the self-employment tax under exemptions for ministers and members of religious orders and members of certain religious faiths lacked standing to contend that these exemptions violated both the Establishment and Free Exercise Clauses of the First Amendment because the taxpayers cannot fall within the exemptions if those sections are held unconstitutional under the First Amendment, and thus, their alleged injury cannot be redressed by a favorable decision.¹⁶ Also, a group of 5,000 taxpayers lacked standing to challenge the alleged failure of the Internal Revenue Service to comply with various constitutional and statutory requirements in its tax collection efforts absent any statement identifying any claimant as having personally suffered from the alleged conduct complained of or anything more than some remote and conjectural allegations of injuries.¹⁷

However, federal taxpayers have standing to raise Establishment Clause claims against exercises of congressional power under the taxing and spending power of the Federal Constitution,¹⁸ so that, for example, federal taxpayers can challenge federal statutes which authorize grants to public or nonprofit private organizations or agencies for services and research in the area of premarital adolescent sexual relations and pregnancy, including religious and charitable organizations, voluntary associations, and other groups in the private sector, as well as governmental agencies, and which restrict the use of funds in various ways,

including a ban on the use of funds to provide family planning services or promote abortion.¹⁹ Further, taxpayers had standing to raise an Establishment Clause challenge to school district programs which provided classes to nonpublic school students at public expense in classrooms located in and leased from nonpublic schools.²⁰

An exception to the general rule that an individual taxpayer, to challenge a statute's constitutionality under the Equal Protection Clause, must show that the alleged unconstitutional feature of statute injures the taxpayer and so operates to deprive the taxpayer of a constitutional right exists when the individual taxpayer seeks to enjoin an illegal act by a municipal body.²¹

CUMULATIVE SUPPLEMENT

Cases:

If no tax money is spent on the allegedly illegal activity, then a plaintiff's status as a municipal taxpayer is irrelevant for standing purposes. *Protect Our Parks, Inc. v. Chicago Park District*, 971 F.3d 722 (7th Cir. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 Am. Jur. 2d, Taxpayers' Actions § 7.
- 2 Am. Jur. 2d, Taxpayers' Actions § 11.
- 3 *Lockheed Martin Corp. v. State Dept. of Revenue*, 210 So. 3d 1123 (Ala. Civ. App. 2016).
- 4 *U.S. v. Windsor*, 570 U.S. 744, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013); *Teeboom v. City of Nashua*, 172 N.H. 301, 213 A.3d 877 (2019).
- 5 *Dumont v. Lyon*, 341 F. Supp. 3d 706 (E.D. Mich. 2018), motion to certify appeal denied, 2018 WL 5292022 (E.D. Mich. 2018); *Hart v. State*, 368 N.C. 122, 774 S.E.2d 281, 320 Ed. Law Rep. 465 (2015); *Phantom Fireworks Showrooms, LLC v. Wolf*, 198 A.3d 1205 (Pa. Commw. Ct. 2018).
- 6 *Dumont v. Lyon*, 341 F. Supp. 3d 706 (E.D. Mich. 2018), motion to certify appeal denied, 2018 WL 5292022 (E.D. Mich. 2018).
- 7 *Ansley v. Warren*, 861 F.3d 512 (4th Cir. 2017).
- 8 *Ansley v. Warren*, 861 F.3d 512 (4th Cir. 2017).
- 9 *Hart v. State*, 368 N.C. 122, 774 S.E.2d 281, 320 Ed. Law Rep. 465 (2015).
- 10 *Reeves-Toney v. School District No. 1 in City and County of Denver*, 2019 CO 40, 442 P.3d 81, 367 Ed. Law Rep. 534 (Colo. 2019).
- 11 *Protect Our Parks, Inc. v. Chicago Park District*, 368 F. Supp. 3d 1184 (N.D. Ill. 2019).
- 12 *American Humanist Association, Inc. v. Douglas County School District RE-1*, 859 F.3d 1243, 344 Ed. Law Rep. 69 (10th Cir. 2017).
- 13 *Feldman v. Bowser*, 315 F. Supp. 3d 299 (D.D.C. 2018).
- 14 *Hein v. Freedom From Religion Foundation, Inc.*, 551 U.S. 587, 127 S. Ct. 2553, 168 L. Ed. 2d 424, 44 A.L.R. Fed. 2d 637 (2007); *Americans United for Separation of Church and State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406 (8th Cir. 2007); *Feldman v. Bowser*, 315 F. Supp. 3d 299 (D.D.C. 2018); *Teeboom v. City of Nashua*, 172 N.H. 301, 213 A.3d 877 (2019).
- 15 *Feldman v. Bowser*, 315 F. Supp. 3d 299 (D.D.C. 2018).
- 16 As to what constitutes a direct interest or injury, see § 143.
- 16 *Templeton v. C.I.R.*, 719 F.2d 1408 (7th Cir. 1983).

- 17 [Chrisman v. C.I.R.](#), 82 F.3d 371 (10th Cir. 1996) (an assertion about the existence of files containing thousands of stories of common abuse among the claimants was not sufficient without a single concrete example).
- 18 [DaimlerChrysler Corp. v. Cuno](#), 547 U.S. 332, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006) (there was no exception to the general prohibition on taxpayer standing for a Commerce Clause challenge to state tax or spending decisions); [DaimlerChrysler Corp. v. Cuno](#), 547 U.S. 332, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006); [Flast v. Cohen](#), 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).
Taxpayers who were former employees of not-for-profit religious and social services corporation had standing to claim that state agencies violated Establishment Clause by providing social services funding to a corporation 95% government financed and using 10% of funds received from government sources for religious purposes. [Lown v. Salvation Army, Inc.](#), 393 F. Supp. 2d 223 (S.D. N.Y. 2005).
- 19 [Bowen v. Kendrick](#), 487 U.S. 589, 108 S. Ct. 2562, 101 L. Ed. 2d 520 (1988).
As to the First Amendment substantial overbreadth exception to the general standing requirement, see § 139.
- 20 [School Dist. of City of Grand Rapids v. Ball](#), 473 U.S. 373, 105 S. Ct. 3216, 87 L. Ed. 2d 267, 25 Ed. Law Rep. 1006 (1985) (overruled on other grounds by, [Agostini v. Felton](#), 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d 391, 119 Ed. Law Rep. 29, 37 Fed. R. Serv. 3d 1051 (1997)).
- 21 [City of Ralston v. Balka](#), 247 Neb. 773, 530 N.W.2d 594 (1995).
Citizens who have paid validly assessed taxes have standing to sue various government entities for relief in the nature of mandamus and have the right to force uniform collection where the tax they pay is not collected from all taxpayers from whom it is legally due. [Douglas v. Glacier State Tel. Co.](#), 615 P.2d 580 (Alaska 1980).

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§ 155. Standing of corporations and other business entities to challenge constitutionality of statute

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Corporations and other business entities can have legitimate legal interests of their own that are sufficient to give them standing under customary rules.¹ An insurance company had standing to challenge the federal regulations which provided that Medicare payments would not be made for services covered by an automobile insurance policy even though the policy stated that its benefits were secondary to Medicare since (1) the company would suffer large financial losses because it would be required to make unanticipated payments on claims arising under previously issued policies, and (2) the rights asserted by the company in connection with such economic obligations were within the zone of interest entitled to constitutional protection.² Retail liquor stores had standing to bring a suit against a state seeking a declaration that a statute prohibiting the advertisement of liquor prices unconstitutionally violated the group's First Amendment speech rights.³ However, a corporation lacked standing to challenge a requirement of a state's video lottery statute that a majority interest of any corporate applicant must be owned by state residents.⁴ A bank lacked standing to assert the due process rights of its depositors.⁵

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Footnotes

- 1 [Hang On, Inc. v. City of Arlington, 65 F.3d 1248 \(5th Cir. 1995\)](#) (topless bar had standing to challenge city ordinance's "no touch" provision as violating First Amendment).
An electricity supplier had standing to assert its First Amendment rights where the state public service commission prohibited the supplier's inclusion in its monthly bills of inserts discussing controversial issues of public policy. [Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York, 447 U.S. 530, 100 S. Ct. 2326, 65 L. Ed. 2d 319 \(1980\)](#).
A tobacco products distributor which alleged that the effects of a challenged statute would be a significant loss of sales and market share and a loss in their trade relationships with retailers and distributors had standing to challenge the constitutionality of a statute establishing an escrow requirement for those tobacco companies who had chosen not to participate (NPMs) in the regulatory scheme established by a master settlement agreement (MSA) resolving states' litigation seeking reimbursement for medical costs associated with tobacco use. [Grand River Enterprises Six Nations, Ltd. v. Beebe, 418 F. Supp. 2d 1082 \(W.D. Ark. 2006\)](#), [aff'd, 574 F.3d 929 \(8th Cir. 2009\)](#).
- 2 [Colonial Penn Ins. Co. v. Heckler, 721 F.2d 431 \(3d Cir. 1983\)](#).
- 3 [44 Liquormart, Inc. v. State of R.I., 39 F.3d 5 \(1st Cir. 1994\)](#), [rev'd on other grounds, 517 U.S. 484, 116 S. Ct. 1495, 134 L. Ed. 2d 711 \(1996\)](#).
- 4 [Chance Management, Inc. v. State of S.D., 97 F.3d 1107 \(8th Cir. 1996\)](#).
- 5 [First Virginia Bank v. O'Leary, 251 Va. 308, 467 S.E.2d 775 \(1996\)](#).

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